

**EDUCATION DEPARTMENT[281]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 256.7(21), the State Board of Education hereby proposes to adopt new Chapter 35, “Educational Standards and Program Requirements for Children’s Residential Facilities,” Iowa Administrative Code.

New Chapter 35 outlines the educational standards and program requirements for children’s residential facilities. 2016 Iowa Acts, Senate File 2304, addresses standards for and certification and inspection of children’s residential facilities. This legislation requires the Board to adopt rules governing educational programs and educational services provided by children’s residential facilities pursuant to 2016 Iowa Acts, Senate File 2304, section 11. This rule making follows that directive.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendment until December 27, 2016, at 4:30 p.m. Comments on the proposed amendment should be directed to Nicole Proesch, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail [nicole.proesch@iowa.gov](mailto:nicole.proesch@iowa.gov); or fax (515)242-5988.

A public hearing will be held on December 27, 2016, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)281-5295.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement 2016 Iowa Acts, Senate File 2304.

The following amendment is proposed.

Adopt the following new 281—Chapter 35:

CHAPTER 35

EDUCATIONAL STANDARDS AND PROGRAM REQUIREMENTS FOR CHILDREN’S RESIDENTIAL FACILITIES

**281—35.1(282) Scope.** These rules apply to the provision of educational programs and educational services in children’s private residential facilities and juvenile homes.

**281—35.2(282) Intent.** It is the intent of this chapter that all school-age children, including children younger than 5 years of age and older than 18 years of age, who are eligible children to receive special education, who are living in any children’s residential facility operated by a private entity providing residential care to children within the state of Iowa, which is not otherwise exempted by the Iowa Code, shall be provided an appropriate education.

**281—35.3(282) Definitions.** For purposes of this chapter, the following definitions shall apply:

“*Child*” or “*children*” means an individual or individuals under 18 years of age. A child is “school-age” if the child is at least 5 years of age on September 15 but not more than 21 years of age or if the child is younger than 5 years of age or older than 18 years of age and is an eligible child to receive special education.

“*Children’s residential facility*” means a facility operated by a private entity and designed to serve children who have been voluntarily placed for reasons other than an exclusively recreational activity outside of their homes by a parent or legal guardian and who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency as defined by 2016 Iowa Acts, Senate File 2304, section 1. “Children’s residential facility” shall also be referred to as a “private facility.”

“*Private entity*” means any residential entity that is not a public entity as defined below.

“*Public entity*” means any facility that houses school-age children and children eligible to receive special education who are under the jurisdiction of the department of corrections, department of human services, board of regents, or other governmental agency and that has current authority to offer direct instruction to children from funding available to one of the above agencies. A public entity shall not bill any Iowa school district or area education agency for educational costs.

**281—35.4(282) Establishing an appropriate educational program.** A private entity operating a children’s residential facility shall not accept any child of school age or a child who is eligible to receive special education services until the entity has been licensed or certified by the department of human services, juvenile court, or other Iowa governmental agency and has established an appropriate educational program.

**35.4(1)** A private entity operating a children’s residential facility may establish an appropriate educational program in one of three ways:

*a.* Becoming an accredited nonpublic school through the standards and accreditation process described in Iowa Code section 256.11 and adopted by rule by the state board of education.

*b.* Utilizing a written contract stating that the public school district in which the private facility is located will provide the educational program and educational services, either directly or by supervision of appropriately licensed staff of the public entity. In the case of a licensed juvenile home, the area education agency of location rather than the school district of location would provide the educational program and educational services.

*c.* Utilizing a written contract stating that an accredited nonpublic school which is located within the same school district boundaries in which the private facility is located will provide the educational program and educational services, either directly or by supervision of appropriately licensed staff of the accredited nonpublic school. This contract may require that some services related to federal programs and special education be provided by the school district which is otherwise the requirement for the accredited nonpublic school.

**35.4(2)** The educational program and educational services delivered through a contract established between a private entity and the school district or accredited nonpublic school shall meet, at a minimum, the standards established by rule 281—12.10(256).

**35.4(3)** Any contract established by the private entity with a school district or accredited nonpublic school shall, at a minimum, include, but not be limited to, the physical location of the educational program and educational services; the parties involved; the purpose of the contract; the program description in detail; the powers, duties and authority of each party to the contract; the jurisdiction of each party to the contract; the dispute resolution procedure; specifications of the services that are contracted, if any, and how costs are to be calculated; billing procedures; how each legal, testing, and reporting requirement will be met; ownership of property belonging to the party that paid the cost or contributed the item; contract amendment procedures; contract approval procedures; contract renewal and termination procedures; duration of the contract; cross indemnification; application of laws, rules and regulations; binding effect; severability; assurances; and signature of the school board with legal power to authorize the terms of the contract. Any contract developed under this rule shall be submitted to the department of education for review and approval by the director of the department of education prior to enactment. A contract that fails to comply with any of the requirements of this chapter is void.

**35.4(4)** Children residing in a private facility operated by a private entity who require treatment or security throughout the day shall have classrooms made available at the site of the private facility at no cost to the school district, or area education agency in the case of juvenile homes, providing

the instructional program or instructional supervision. The classroom must meet the requirements for educational space for children in accordance with the Iowa Code, administrative rules, and state fire marshal regulations.

**35.4(5)** Nothing included in this chapter shall be interpreted to regulate religious education curricula at the private entity.

**281—35.5(282) Display of notices; fees.**

**35.5(1)** A private entity operating a private facility under this chapter shall display prominently in all of the private entity's major publications and on its Internet site a notice accurately describing the educational program and educational services provided by the private entity and who is providing the program and services.

**35.5(2)** The private entity operating a private facility shall include in any promotional, advertising, or marketing materials available by print, broadcast, or via the Internet or any other means all fees charged by the private entity for the educational program and educational services offered or provided and the entity's refund policy for the return of refundable portions of any fees. This subrule shall not apply to sponsorship by a private entity of public radio or public television broadcasts.

**35.5(3)** If the educational programs and educational services are provided by or through the public school district of location, all fees related to the educational programs and educational services shall be authorized by the Iowa Code, including but not limited to Iowa Code chapter 282, and shall be the same fees as charged to other enrolled students. The public school district cannot charge nonresident students a higher fee than resident students.

**281—35.6(282) Provision of appropriate educational services.**

**35.6(1)** Private entities shall fully cooperate with the area education agency and school district in which the facility is located to fulfill the area education agency's responsibilities for child find under 281—Chapter 41. A child shall be made available for evaluation and provision of services for which the child is eligible.

**35.6(2)** If a child does not require treatment or security by the private entity in such a time or manner as is required to remain on the campus of the private facility, a child with an individual education plan shall be provided special education instruction and related services with other nondisabled children within the least restrictive environment to the maximum extent appropriate.

**35.6(3)** The area education agency in which the private facility is located, the school district of residence, and other appropriate public or private agencies or private individuals involved with the care or placement of a child shall cooperate with the school district in which the private facility is located in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in a private facility and to ensure academic credit is granted to the child for instructional time earned upon discharge from the private residential facility.

**35.6(4)** A private facility that houses eligible children who are 4 years of age by September 15 of the school year shall notify the parents or legal guardians of these eligible children about the opportunities to access quality preschool programs. Children whose parents are Iowa residents may access the statewide voluntary preschool program under 281—Chapter 16 at no cost to the parents, and transportation will be provided by the public school district in which the statewide voluntary preschool provider is located from its statewide voluntary preschool programs funding. Children whose parents are not Iowa residents may access the statewide voluntary preschool programs, if space is available, through a tuition and transportation agreement with the public school district in which the statewide voluntary preschool program provider is located.

**281—35.7(282) Reporting.** A private entity shall comply with requests by the Iowa department of education for basic educational and financial information.

These rules are intended to implement 2016 Iowa Acts, Senate File 2304.